

Message Text

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TO AMEMBASSY QUITO PRIORITY

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E. O. 11652: N/ A

TAGS: CPRS, EFIN, EC (STROUTH, HOWARD)

SUBJECT: AMCIT HOWARD STROUTH

REF: QUITO 969

DAVILA- GUTHRIE LETTER, 11/6/72

1. DECREE 475 DOES NOT APPEAR TO BE DISCRIMINATORY AGAINST AMERICANS OR FOREIGNERS PER SE; ITS PROVISIONS APPLY EQUALLY TO ALL PERSONS AGAINST WHOM THE GOE HAS TAX CLAIMS. NEVERTHELESS, DISCRIMINATORY APPLICATION OF LAW NOT DIFFICULT TO IMAGINE. USE OF LAW ONLY AGAINST STROUTH - OR AGAINST AMERICANS - WOULD OBVIOUSLY BE DISCRIMINATORY. IN ITS EFFECT, LAW TENDS TO DISCRIMINATE AGAINST PERSONS WHO HAVE NO ECUADOREAN INCOME AGAINST WHICH FUTURE TAX CREDITS COULD BE APPLIED, PERSONS WHO WOULD USUALLY BUT NOT ALWAYS BE FOREIGNERS. THUS, DISCRIMINATION ISSUE CANNOT BE RESOLVED UNTIL WE HAVE FURTHER INDICATION OF HOW - AND AGAINST WHOM - LAW IS TO BE APPLIED.

2. RELATED PROBLEM, AS NOTED DAVILA LETTER AND
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PARA 1 REFTTEL, IS POSSIBLY CONFISCATORY NATURE OF PROCEDURE WHICH REQUIRES POSTING OF BOND IN AMOUNT OF TAX CLAIM AND DENIES RECOVERY OF AMOUNT EVEN IF PERSON ULTIMATELY PREVAILS IN DISPUTE WITH LOCAL TAX

AUTHORITIES. WERE STROUTH TO POST THE \$12,000, OBTAIN A FAVORABLE DECISION (AFTER MORE THAN SIX MONTHS) FROM THE LOCAL TAX COURTS, AND NEVERTHELESS LOSE THE BOND, IT WOULD BE DIFFICULT TO ARGUE THAT THIS DID NOT CONSTITUTE A SEIZURE OR OTHER TAKING OF PROPERTY FOR PURPOSES OF GONZALEZ, HICKENLOOPER, ETC., UNLESS THE TAX CREDITS RECEIVED BY THE CLAIMANT IN LIEU OF THE BOND COULD BE (A) USED TO OFFSET THE CLAIMANT' S FUTURE TAX LIABILITY (APPARENTLY UNLIKELY IN CASE OF STROUTH), OR (B) TRANSFERRED FOR VALUE TO ANOTHER PERSON OR PERSONS FOR USE BY THE LATTER. SUCH TRANSFERABILITY WOULD BE A QUESTION OF ECUADOREAN LAW; IN ANY EVENT, IT COULD NOT BE PRESUMED.

3. NEVERTHELESS, WE ARE RELUCTANT TO ASSUME IMPLICITLY OR EXPLICITLY WITHOUT FURTHER EVIDENCE THAT AS YET UNCONSTRUED GOE DECREE WILL NECESSARILY BE APPLIED IN SUCH A WAY AS TO RESULT IN A CONFISCATORY TAKING OF PROPERTY IN VIOLATION OF INTERNATIONAL LAW AND U. S. LEGISLATION. REALIZING THAT IT WILL BE NECESSARY FOR THE EMBASSY TO INDICATE SOON TO STROUTH WHETHER WE BELIEVE HE SHOULD POST THE BOND AND ATTEMPT TO COMPLY WITH THE PROVISIONS OF THE LAW, OR REFUSE TO COMPLY AND ACCEPT THE CONSEQUENCES, WE BELIEVE YOU SHOULD RAISE THE MATTER INFORMALLY NOW WITH GOE OFFICIALS. YOU SHOULD POINT OUT OUR CONCERN THAT APPLICATION OF DECREE 475 TO A U. S. CITIZEN (OR OTHER PERSON) WHO IS NOT EXPECTED TO HAVE FUTURE GOE INCOME - THUS MAKING ANY TAX CREDITS USELESS - COULD BE VIEWED AS EXPROPRIATORY ACT WHICH IF INVOLVING U. S. CITIZEN WOULD CAUSE PROBLEMS REGARDING VARIOUS PROVISIONS OF U. S. LEGISLATION. YOU SHOULD EXPRESS YOUR HOPE THAT GOE WILL FIND MEANS OF APPLYING THIS YET UNTESTED DECREE TO SUCH PERSONS IN MANNER WHICH WILL ASSURE THAT POSTED BOND IS FULLY RECOVERABLE IF THE CLAIMANT PREVAILS, SO THAT UNDESIRABLE AND UNNECESSARY CONFRONTATION CAN BE AVOIDED. FYI: WHILE AS NOTED ABOVE WE CAN SEE HOW LIMITED OFFICIAL USE

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RESULT OF DECREE' S APPLICATION COULD BE CONFISCATORY,

WE VERY MUCH WISH TO AVOID PUTTING OURSELVES IN POSITION
OF PREJU
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